

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>CHARLES L. &amp; OLGA E. BURRISS</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 12-030V

:.....:

**DECISION AND ORDER**

On April 11, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Charles L. & Olga E. Burriss for a variance to reduce the 20-foot rear setback feet to 11 feet for a detached garage, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the Zoning Regulations).

The Petitioners certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Charles L. Burriss testified on his own behalf. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the east side of MD 97 about 250 feet south of Riggs Meadow Drive. It is identified as Tax Map 8, Grid 23, Parcel 225 and is also known as 2005 Rt. 97 (the Property).

2. Property Description. The RC-DEO (Rural Conservation: Density Exchange Option) zoned Property is a triangular shaped 0.601-acre lot. It is improved with a single-family detached dwelling located in the northerly and broadest portion of the property. There is a deck on the dwelling's westerly side. Access is provided from a driveway off MD 97. The driveway leads to a parking and turnaround area in front of the dwelling.

3. Vicinal Properties. Adjacent properties are also zoned RC-DEO. The northern property is Preservation Parcel A of the Riggs Meadow subdivision. To the east, Parcel 34 is a farm. To the west, across MD 97 is Preservation Parcel B of the Riggs Meadow subdivision.

4. Variance Request. The Petitioner, the Property owner, requests a variance from Section 128.A.12.b.(3)(a) of the Zoning Regulations to construct a 16'x24' detached garage 11 feet from the rear easterly property line, instead of the required 30-foot side setback.

5. Mr. Burriss testified that the proposed garage is the minimum sized required to store his vehicles.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2.a.(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the triangular shaped Property is a unique physical condition causing practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a.(1). The detached garage will be used for a permitted purpose and will not change the nature or

intensity of use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

The practical difficulty in complying strictly with the setback regulation arises from the shape of the lot and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

The proposed detached garage is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this **18<sup>th</sup> day of April 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

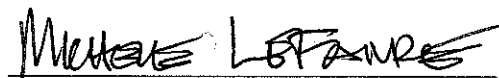
That the Petition of Charles L. & Olga E. Burriss for a variance to reduce the 20-foot rear setback to 11 feet for a detached garage in the RC-DEO Zoning District is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition and Variance Plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**



**Michele L. LeFaivre**

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.